

TESTIMONY
OF
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DEPARTMENT OF JUSTICE
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Introduction

Thank you Chairman Abraham, and members of the Subcommittee, for the opportunity to appear before you today to discuss the Immigration and Naturalization Service's (INS) Detention Program -- where we have come from, where we are today, and what has to be done to get where we need to be.

Strengthening this country's capacity to detain and remove criminal and other deportable aliens is one of the key components of INS' comprehensive strategy to deter illegal immigration and to protect public safety. The Detention Program is a critical component of both the border and interior enforcement efforts of INS. Without an effective program, apprehending deportable aliens becomes a training exercise, lacking credibility and producing little result.

Establishing an effective Detention Program, however, requires more than simply enhancing our capacity to detain and remove deportable aliens. We must ensure that this capacity is being exercised consistently and humanely nationwide. Additionally, we have to be sensitive to the unique circumstances of those asylum seekers who are placed our detention system and guarantee that their claims are adjudicated as expeditiously as possible. People who come to this country yearning to breathe free should not languish behind bars.

INS' Detention Operations

The purpose of detention is to ensure the appearance of aliens who are awaiting the disposition of their cases or removal from the United States and to protect communities from those who may pose a danger. INS detains aliens who are under immigration proceedings at its own detention facilities called Service Processing Centers (SPCs), contract detention facilities (CDFs), contract juvenile shelters, local government detention facilities, and Bureau of Prison (BOP) facilities.

This Administration, with strong support from the Congress, has taken significant steps to reverse years of neglect in the Detention Program. Over the past several years, this commitment has been backed by significant increases in resources devoted to the detention and removals efforts. From FY 1994 through FY 1998, funding from all sources increased from \$239 million to \$733 million, and the number of positions rose from about 1,900 to about 3,400. This represents an increase of about 200% in our funding, and about 80% increase in personnel.

INS' program is the fastest growing detention operation within the Department of Justice. The agency maintained an average of approximately 6,600 beds in FY 1995 and about 8,600 beds in FY 1996. Last year, our capacity grew to about 12,000 beds, and as of September 1, we were using approximately 16,000 beds. This represents an increase of about 140% in the number of beds since FY 1995. Our growth could not have been accomplished without the close cooperation we maintain with local governments, which provide us with about half our detention capacity.

In the past, illegal immigrants faced little risk of being caught, and if they were apprehended, chances that they would be removed were also limited. This was true even for aliens who committed crimes while in the United States. Today, the situation is vastly different, due to our increased detention capacity and improved removal efforts.

Removing individuals who are here unlawfully underscores our commitment to restoring credibility to the nation's immigration laws. We are also making the streets of our communities safer by removing an increasing number of aliens who have been convicted of drug trafficking or other serious criminal offenses. During the first 10 months of this fiscal year, we removed criminal aliens at a rate of more than 1,000 per week, putting us on track to remove more criminal aliens this year than the total number of criminal and non-criminal aliens removed in FY 1995. This year we expect to formally remove more than 165,000 aliens, including criminal aliens, or about 50% above last year's efforts.

The increase in detention capacity alone does not tell the whole story. INS' detention operations are characterized by large numbers of aliens moving through the detention system in short periods of time. The number of aliens being taken into detention and processed, as represented by the number of initial admissions to a detention facility, has increased significantly over the last four years. In FY 1995, the number of initial admissions was about 86,000 while in the subsequent two years it was about 108,000 and 142,000, respectively. This fiscal year the number of initial admissions will exceed 150,000.

The average length of stay for an alien in INS custody is about 34 days, although stays range from a mere couple of days to many years. Mexican nationals, on average, stay in detention for much shorter periods, while other nationals may remain for months or even years. Applications for relief from removal, difficulties in obtaining travel documents from the alien's country of origin, and efforts by some aliens to prevent removal contribute to the length of stay.

INS' detention operations are complex because of the diverse populations within the two categories of detainees -- criminal aliens and non-criminals. We detain adult males and females, juveniles, and even families. Each of these groups presents complex security, administrative, and social issues to our detention program managers. Our facilities and employees must be prepared to deal with individuals who have committed murder while in the United States, as well as asylum seekers, and families that include minors. Detainees may come directly from a federal, state, or local prison, from a Border Patrol operation, from an Investigations' anti-smuggling or employer sanction operation, or from enforcement efforts by Inspections personnel at an airport or other port of entry.

Our detention priorities reflect this complex mission. The removal of aliens who have committed crimes in the United States has been, and will remain, our top enforcement priority. Consequently, we manage our detention facilities to ensure that space is available for criminal aliens who pose a danger to the community or a risk of flight.

With the passage of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) of 1996, Congress expanded this priority by requiring that virtually any alien who is subject to removal on the basis of a criminal conviction, without regard to age or circumstances, be detained without bond. Aliens in this category may not be released under the new law, regardless of whether they are likely to appear for proceedings and pose no danger to the community. Moreover, aliens who have been ordered removed from the United States must be detained until they are removed or until 90 days have passed, regardless of the basis for the order and the prospects that their home country will accept his return.

Even with the significant increases in resources, INS will be unable to meet the custody requirements of IIRIRA. The agency has limited detention resources to address both mandatory detention and to support of border control, anti-smuggling, and work-site enforcement. In our system, aliens subject to mandatory detention have first priority for all available detention space. This includes criminal aliens subject to mandatory detention because of their crimes and aliens with final orders of removal, as well as arriving aliens at ports of entry who are inadmissible under the Immigration and Nationality Act (INA) and are subject to expedited removal proceedings.

Mandatory Custody

In each of the past two years, I have found it necessary to invoke the Transition Period Custody Rules (TPCR) to suspend the full application of the mandatory detention provisions of IIRIRA. Under TPCR, INS and the immigration courts may release a lawfully admitted alien who is deportable for a criminal offense after considering the nature of the offense, the likelihood that the person will appear for further proceedings, including removal; and what danger that the person may pose to the community. The regulation leaves no discretion for release in cases involving certain specified serious offenses.

TPCR expires on October 8, but INS continues to lack sufficient detention capacity and personnel to comply fully with the provisions of IIRIRA and maintain a comprehensive and balanced enforcement effort at the borders and in the interior.

Currently, approximately 9,600 of our 16,000 available beds, about 60% of our capacity, are occupied by criminal aliens. Of the remaining 6,400 spaces about 1,100 beds are being used to support airport enforcement operations, 400 are for shelter and foster home beds to house unaccompanied juveniles, and about 4,900 beds support the remaining border and interior enforcement operations.

We recognize that it would be unreasonable to fund the capacity to detain every alien during the course of removal proceedings. Consequently, we are actively exploring alternatives to detention for ensuring that aliens for whom release from custody is deemed appropriate appear for their scheduled hearings and ultimately for removal if it is so ordered. We have enlisted the Vera Institute, a highly regarded non-profit organization that provides support to New York City's probation and parole programs, to examine the effect on that supervised release has on appearance rates. The Appearance Assistance Project, a pilot program now in its second year, will be evaluated regarding the effect it had on regular reporting requirements, assistance in navigating the process, and help with obtaining representation can have on appearance rates.

Prosecutorial Discretion

In other contexts, Mr. Chairman, you have suggested that INS exercise its prosecutorial discretion not to remove certain aliens when the requirements of IIRIRA impose particular hardships. We agree that in some limited circumstances, prosecutorial discretion will afford some measure of temporary relief. However, the mandatory custody provisions present a different dilemma. Most of the people for whom custody is mandatory are people we want removed from the United States. However, in some cases, no purpose is served by maintaining the person in custody during the entire process. Accordingly, while we agree that we have discretion to determine whether to pursue removal, we firmly believe that determination should not be dictated by whether the person's custody will be mandated by the statute.

An extension of the TPCR would also offer some flexibility in dealing with long-term detainees whose home countries refuse to issue travel documents and take them back. We currently detaining about 2,500 of these individuals in our facilities or local jails under contract to INS. They pose special security and administrative problems in our detention program because our system is not designed for long-term detention. Unlike the typical correctional system, in which prisoners obtain all educational and vocational programs and rehabilitation services, our mission is to provide secure and humane detention to those individuals under immigration proceedings. We have begun efforts, with the support of the Department of Justice, to house the long-term, non-removable criminal aliens in BOP facilities. The BOP has the

appropriate facilities and staff to handle criminal aliens convicted in the United States of very serious crimes and who are likely to remain in custody for many years.

Detention of Asylum Seekers

One point of concern that has often been raised involves the sensitivities surrounding the detention of asylum seekers. INS has long been committed to the idea that the government should seek to avoid the needless detention of asylum seekers. In 1992 INS initiated the Asylum Pre-Screening Officer (APSO) Program to identify asylum seekers in detention whose claims were sufficiently promising to weigh in favor of their release while their claims were being heard by an immigration judge. Aliens whose claims met the screening standard and who were considered unlikely to abscond or to pose a threat to the community could be considered for release. The program was implemented to make wiser use of limited detention space and to avoid the unnecessary detention of asylum seekers.

In the past two years there have been significant developments in the detention arena which have affected the treatment of detained asylum seekers, who make up roughly 5% of the population in INS custody. The first involves the expedited removal provisions of IIRIRA. APSO mainly covered aliens who were placed into exclusion proceedings at ports of entry, essentially the same group covered by the expedited removal provisions of IIRIRA, which also uses the same screening mechanism—the "credible fear of persecution" standard—as APSO. Arriving aliens who are inadmissible under section 212(a)(6)(C) or 212(a)(7) are subject to expedited removal. If such a person indicates either an intention to apply for asylum or a fear of persecution, an asylum officer will determine whether the alien has a credible fear of persecution. The statute requires that the person be detained until found to have a credible fear. INS' policy, however, is to favor release of persons who meet the screening standard and who do not appear to pose a risk of flight or a danger to the community.

INS has added additional safeguards within the process to ensure that asylum applicants will be afforded the opportunity to prepare for the credible fear interview. Persons who are referred are brought to an INS detention facility -- rather than being interviewed immediately after the secondary inspection -- and they are given 48 hours in which to rest and to consult with a person or persons of their choosing.

In the past, an arriving alien who presented him/herself at a port of entry without the necessary documents or who attempted fraud would be placed in exclusion proceedings. Often the asylum applicant's exclusion hearing would be scheduled much later and the person would be detained pending his immigration proceeding. Since the change in the law, aliens who pass the credible fear test are placed in an immigration hearing in much shorter order. The process calls for District Directors to consider automatically whether to release an asylum seeker who meets the credible fear test and such persons are often released if they have ties to the community and a source of support. Further refinements are needed to this release policy, and we have instructed the districts to supply us with statistics necessary to determine what further improvements should be made nationally.

The second major development that affects asylum seekers is INS' publication of new detention standards for its SPCs and contract facilities. These standards are not limited to asylum seekers, but their situation is directly improved because of new standards that cover areas such as access to legal material and telephones; visitation policy; and group legal rights presentations. Asylum seekers who are detained are generally held in INS-controlled facilities covered by these standards.

While INS strives to detain asylum seekers in its own facilities, this is not always possible. Many asylum seekers come into our custody in areas that do not have an INS facility. It is administratively difficult, and costly, to transport every alien to an INS detention facility. Furthermore, INS does not have the capacity to house all detainees in its own facilities, and we only have two facilities solely dedicated to detaining non-criminal aliens. They are the CDFs at Elizabeth, New Jersey (300 beds), and Queens, New York (200 beds). Additionally, concerns may arise when detainees are transported to INS facilities that distance them from their families, friends, legal counsel, and other members of their support group.

Conditions of confinement in our facilities, as well as in local detention facilities, are another area of concern, especially as it affects women, juveniles, and asylum seekers. This is an area of particular concern to me, and I must emphasize that INS is committed to providing a safe and humane environment for all individuals held in its custody. It is our policy to treat all aliens in custody with dignity and respect.

Within our own facilities INS maintains a policy that non-criminal aliens and those aliens with minimal criminal history must be housed separately from career and dangerous criminal aliens. Where a facility is responsible for housing both criminal and non-criminal aliens, intermingling of populations is limited through proper identification and classification of all detainees. To ensure consistency in the application of our policies, we updating our Detention Operations Manual, a major effort that comes in the midst of an unprecedented expansion of our detention capacity and responsibilities.

We have issued 17 new Detention Standards, and we are in the process of drafting another 22 standards that will complete our manual. These standards deal with such issues as detainee visitation policies, classification of detainees, access to legal materials, detainee grievances, marriage requests, religious practices, etc. We have used INS policies, BOP policies and expertise, as well as American Correctional Association (ACA) detention standards to develop our own standards. Our new standards comply with and often exceed ACA standards. The ACA standards are recognized as the national standards in the field of corrections, and they address very specific conditions of confinement that ensure detainee rights are not violated.

The various county and local detention facilities INS uses must follow state and local standards for the humane treatment of those in detention. In addition, INS conducts a comprehensive jail inspection prior to housing INS detainees in a particular detention facility and annually thereafter. Facilities that do not meet our minimum standards must take necessary corrective action or INS will not use them. We are revising our jail inspection standards to incorporate the principles and spirit of the detention standards promulgated for our own facilities.

While local jails provide less INS control, the rapid increase in funding for detention has left INS with no alternative but to rely increasingly on local facilities. Where we have a large presence in a local detention facility, INS attempts to have its detainees segregated from the rest of the population housed at that facility, and have INS staff on site to deal with the aliens in custody. However, there are instances where some of our detainees, both criminals and non-criminals, may not be segregated from individuals serving sentences. Nevertheless, these local jails use classification systems that apply equally to criminals and non-criminals in determining housing assignments. Classification systems are not based solely on a detainee's criminal history. The classification decision takes into account all available information relevant to a detainee's potential threat to other detainees, facility staff, and himself or herself. Thus, it is possible and appropriate for a non-criminal alien with a history of assaults and violent behavior while in custody to be housed with a criminal who exhibits similar behavior.

Detention of Juveniles

In expanding our detention capacity, we have paid particular attention to the housing of juveniles. Over the last three years we have increased our juvenile detention capacity by about 250 beds, which more than doubled our available space. Also, in the past year we have trained all of our officers who come in contact with juveniles on the proper handling of their needs. INS' policy is to place each detained juvenile in the least restrictive setting appropriate to the minor's age and special needs. We are also concerned that such a setting be consistent with INS interests to ensure the minor's timely appearance before INS and the immigration courts, while protecting the minor's well being and that of others. We are very proud of the progress we have made in this area, and we constantly emphasize the need to house juveniles in state-licensed facilities that meet strict requirements to provide for their medical, educational and recreational needs.

Access to Representation and Legal Materials

Another important area where we are making very substantial progress is that of improving aliens' access to representation and legal materials. In the past year-and-a-half we have worked very closely with the American Bar Association (ABA) to improve legal access for detained aliens. Working with the ABA, we published detention standards in January that cover detainee visitation, telephone access, access to legal materials, and group legal presentations. Additionally, on March 5, I implemented INS' Program for Ensuring Access to Detained Aliens. This program includes working with the ABA on implementing the detention standards that deal with access, developing a strategy to increase pro bono representation for detained aliens, and familiarizing all of the parties with the revised procedures.

As part of this process, representatives of INS, the ABA, and private practitioners visited four INS detention facilities and one local jail. Our hope is that these visits, coupled with regional and local meetings, will result in enhanced cooperation at the local level. Also, meetings with INS Internal Audit staff have been held to ensure that access procedures are being evaluated in INSPECT (an internal review process designed to ensure quality, accountability and professionalism at all INS field offices) reviews. Additionally, I appointed the Senior Counsel for Detention and Deportation, Office of Field Operations, as INS Headquarters Facilitator for this program. We are making great strides and are fully committed to the success of this program.

In order to improve access and facilitate telephone communication by the detainees we awarded a contract in late July to Public Communications Service (PCS), under which state-of-the-art telephone systems will be installed in INS detention facilities that will allow detainees to make collect and debit calls at a reasonable cost, as well as free phone calls to consulates, pro bono organizations, and immigration courts. The system will also facilitate detainees' efforts to contact their families, friends and legal counsel. We expect this new system to be fully operational in all our facilities by the end of the calendar year.

Other Recent Accomplishments

The Detention Program cannot be characterized only by its significant growth in the last several years. We must also look at efforts to improve the quality of its service, the increase in its effectiveness and efficiency, as well as measures taken to improve its cost effectiveness. I have already discussed our efforts to update and improve our detention standards and to improve access to detained aliens. I wish to point to some other significant accomplishments during the past year.

Earlier this year we opened a new 450-bed detention facility in Batavia, New York. It is the first time that we have been able to build a new detention facility, as opposed to modernizing and/or expanding existing structures inherited from other government entities. This modern, state-of-the-art facility is a Federal Detention Center operated by INS but housing both INS detainees as well as United States Marshals Service (USMS) pre-trial detainees. It is the first time that an INS facility regularly houses individuals that are not under immigration proceedings. The facility was constructed to meet current ACA accreditation standards, and provides outstanding working and living conditions for our employees and detainees.

We also opened two new 200-bed dormitories at the El Paso SPC, a 300-bed dormitory at the Krome SPC, and a 200-bed dormitory at the Port Isabel SPC. Three additional 200-bed dormitories will be constructed by next year at the Port Isabel, which is only part of the overall efforts to completely modernize all structures at this SPC. All of these new buildings are being constructed to meet ACA standards.

At the El Paso SPC, the construction of a clinic, new kitchen, new processing structure, and deportation/EOIR building is almost complete. Additional construction projects at the Krome, El Centro, and Florence SPCs are also underway. These construction projects represent efforts to modernize our facilities and improve both the working conditions for employees and living conditions for detainees.

We have contracted with the ACA to receive pre-accreditation assessments and training for the detention facilities that had not started the accreditation or re-accreditation process. So far, two out of the nine SPCs and three out of the six CDFs are accredited, and our goal is to accredit all facilities. The accreditation program offers INS the opportunity to evaluate its operations against national correctional

standards, remedy deficiencies, and upgrade the quality of services being provided. Receiving accreditation demonstrates a good faith effort to improve conditions of confinement and a commitment to a safer and more humane environment for personnel and detainees. In addition, eight SPCs and two CDFs have received accreditation from the National Commission on Correctional Health Care (NCCHC), while three SPCs have also received accreditation from the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO). These latter two bodies establish acceptable standards for health care, and visibly demonstrate our commitment to improving detainee-patient care quality.

INS has an Inter Agency Agreement with the United States Public Health Service (PHS) to provide medical care to individuals in our custody. Our relationship with PHS dates back to 1891 at Ellis Island, although their direct support at our facilities dates back to 1981. In the past year we have expanded clinical services to 24-hours, seven days per week, and have established a managed care program to contain our health care costs. We started a pilot fiscal intermediary project at our SPCs, to pay our medical claims. So far this fiscal year, we have saved \$2.1 million. We plan to expand this project to all the detention facilities used by INS, which should allow us to save 25% cost in our health expenditures.

INS has been successful in introducing video conferencing (VTC) technology to the detention process to conduct remote hearings for detained aliens and alien inmates participating in institutional hearing programs. We have equipped, or are in the process of equipping, 15 of EOIR's courts and a number of remote hearing sites. With VTC, the government realizes savings as a result of fewer detainee movements to court; shorter stays in detention; and reduced travel by judges, court staff, and attorneys. Additionally, there are intangible benefits such as greater flexibility and efficiency in scheduling hearings as well as improved security. Because of its success, we are exploring the use of VTC instead of in-person consular interviews to expedite the issuance of travel documents. Additionally, we plan to test telemedicine (use of video equipment by a doctor to make a diagnosis from a remote location) to decrease costs and improve the overall quality of medical care for detainees.

Additionally, we are cutting costs by establishing transportation hubs tied to the Justice Prisoner and Alien Transportation System (JPATS), which will also improve our ability to remove aliens in the most expeditious manner. The use of JPATS has increased by more than 400% over the last four fiscal years, and we expect to move over 55,000 aliens this fiscal year. We expect to increase its use by approximately 10,000 movements, next fiscal year. JPATS flights allow us to return criminal and other illegal aliens to their home countries in a more secure and cost effective manner than by using commercial airlines.

By using JPATS we prevent the problems that could occur in the rare instances when some aliens being removed on commercial airlines do not behave appropriately, thus disrupting the public's travel and the work of airline employees. The use of JPATS also increases our effectiveness in the use of escorts for removals. Currently, we are using 18-21 JPATS repatriation flights per month, and we expect to increase this number by about 20% in FY 1999. Repatriation flights to Central and South America and the Caribbean basin are now routine and we expect JPATS flights to other parts of the world to become routine next fiscal year.

In addition to issuing several standards related to detention operations at our SPCs and CDFs, we have published two standards relating to escorts and the use of restraints. Among their many provisions, these two standards provide specific guidelines to our employees when aliens are transported by ground or air must be escorted, the number of escorts required, the type of restraints to be used, and the circumstances under which restraints can be used. Both the employee unions and representatives of the airline industry participated in the drafting of these standards.

Facing the Future

As I indicated earlier in my testimony, we are grateful for the strong support that both this Administration and Congress have provided. It has allowed us to elevate the Detention and Deportation Program from stepchild status to that of an integral member of our enforcement family. However, despite the substantial progress we have made and the hard work, dedication and creativity of the Detention staff,

INS' current structure is impeding efforts to make this family function even more effectively. And, this is an obstacle that no amount of resources can overcome.

Detention and deportation, however, is not our only program hampered by this outmoded structure; it impedes performance throughout the agency by restricting accountability and by creating confusion about roles and responsibilities. The only way to cast off this shackle is by fundamentally restructuring INS. We have proposed to do this by dividing the enforcement and service functions of the agency into distinct, separate chains of command, each with a single point of accountability for performance.

We want to create enforcement areas that bring detention and deportation together with the other enforcement disciplines -- Border Patrol, inspections, investigations, and intelligence -- under a single enforcement director. Currently, these components do not answer to the same person until you reach the top levels of the agency, which is far too high in the chain of command to establish the close coordination necessary for effective enforcement.

Operation Gatekeeper and Operation Rio Grande have been successful, in part, because Detention and Deportation personnel work closely with Border Patrol to meet the bed space and transportation needs of these operations. They have been able to achieve a high level of coordination in spite of our current structure, not because of it. We must support our hardworking personnel. Given the increasingly complex challenges we face, we can no longer leave this to chance; coordination of day-to-day enforcement activities must be the rule, not the exception.

Restructuring will not only improve coordination between Detention and Deportation and our other enforcement disciplines, it will also strengthen internal logistics by replacing the thirty-some offices currently involved in arranging transportation and detention for apprehended aliens with a consolidated group of new Detention and Enforcement Support offices. As a result of these internal and external improvements, we will be able to remove criminal and illegal aliens in a more efficient, economical, and expeditious manner.

Detention will also be enhanced by the fact that our proposal, unlike other restructuring plans, will preserve the vital synergy between enforcement and services by keeping these two inter-connected and interdependent functions under one roof. Take the case of asylum seekers, for example. Proper and prompt adjudication of asylum claims requires us to be sensitive to the unique circumstances and needs of asylum seekers from the moment they enter the country. Maintaining the ties between enforcement and services will ensure that all immigration officers develop this needed sensitivity.

In short, restructuring will advance our efforts to protect both the American public and aliens in our custody.

This concludes my formal statement on the Detention Program of INS. I thank you for the opportunity to appear before you and hope that we will earn your support for enhancing this critical program. Mr. Chairman, I would be happy to answer any questions that you and Members of the Subcommittee may have.